

## South Carolina bill outlaws websites that tell how to get an abortion

By Cat Zakrewski

Shortly after the Supreme Court ruling that overturned the right to [abortion](#) in June, South Carolina state senators introduced legislation that would make it illegal to “aid, abet or conspire with someone” to obtain an abortion.

The bill aims to block more than abortion: Provisions would outlaw providing information over the internet or phone about how to obtain an abortion. It would also make it illegal to host a website or “[provide] an internet service” with information that is “reasonably likely to be used for an abortion” and directed at pregnant people in the state.

Legal scholars say the proposal is likely a harbinger of other state measures, which may restrict communication and speech as they seek to curtail abortion. The June proposal, [S. 1373](#), is modeled off a blueprint created by the National Right to Life Committee (NRLC), an antiabortion group, and designed to be replicated by lawmakers across the country.

As the fall of *Roe v. Wade* triggers a flood of new legislation, an adjacent battleground is emerging over the future of internet freedoms and privacy in states across the country — one, experts say, that could have a chilling impact on First Amendment-protected speech.

“These are not going to be one-offs,” said Michele Goodwin, the director of the Center for Biotechnology and Global Health Policy at the University of California at Irvine Law School. “These are going to be laws that spread like wildfire through states that have shown hostility to abortion.”

Goodwin called the South Carolina bill “unconstitutional.” But she warned it’s unclear how courts might respond after “turning a blind eye” to antiabortion laws even before the Supreme Court overturned *Roe*. Many conservative states’ legislative sessions ended [before the Supreme Court’s decision](#), and won’t resume until next year, making South Carolina’s bill an anomaly. But some tech lobbyists say the industry needs to be proactive and prepared to fight bills with communications restrictions that may have complicated ramifications for companies.

“If tech sits out this debate, services are going to be held liable for providing basic reproductive health care for women,” said Adam Kovacevich, the founder and CEO of Chamber of Progress, which receives funding from companies including Google and Facebook.

Tech companies could soon be navigating a disparate patchwork of state laws, caught in the middle of a political tug of war between red states and blue states. Democrats are already considering [new data privacy proposals](#) to protect reproductive health data and other digital trails that could be used to prosecute people seeking abortion. Meanwhile, Republican states could attempt to preserve and collect that same data, which has been used as key evidence in [cases against pregnant women](#).

Eric Goldman, a professor at Santa Clara University School of Law, said the First Amendment and Section 230, a bill that shields internet providers and tech companies from liability for the posts, photos and videos people share on their sites, provide a strong defense in many instances for websites and providers facing lawsuits over hosting information about abortion access.

But individuals could face liability for aiding and abetting people in accessing a criminalized procedure if they send messages about how to obtain an abortion or otherwise break the law.

For the NRLC, which wrote the model legislation, limiting communication is a key part of the strategy to aggressively enforce laws restricting abortion. “The whole criminal enterprise needs to be dealt with to

effectively prevent criminal activity,” Jim Bopp, the group’s general counsel, wrote in a July 4 memo, comparing the group’s efforts to fighting organized crime.

In an interview with The Washington Post, Bopp said that the group has refined its blueprint for states since the South Carolina bill was introduced last month. The restrictions on websites and internet hosts in the July model bill language would only apply when the information is likely to be used “for an unlawful abortion in this state,” he said, not abortions generally, as the South Carolina bill says. The group “tried to be very careful in vetting this so it doesn’t impinge on First Amendment rights,” he added. He said the provision was intended to limit the trafficking of abortion-inducing drugs, which throughout the interview he compared to the trafficking of fentanyl.

Yet there’s broad uncertainty about how courts would interpret such bills, which might lead to companies and websites taking down information about abortions for fear of lawsuits.

“The legal ambiguity works in favor of regulators,” Goldman said. “They can suppress a lot of constitutionally protected speech just because of fear of liability.”

Democrats are expected to respond to the conservative states’ with their own regulatory efforts, largely focused on protecting sensitive data. California State Assembly member Mia Bonta introduced legislation earlier this year that would protect people from law enforcement requests from other states to turn over information that would identify people seeking an abortion.

A staffer in Bonta’s office said she introduced the legislation amid concerns that the Supreme Court would overturn *Roe*. Planned Parenthood Affiliates of California approached her with the concept of the legislation. The bill will have a hearing in August, and Bonta’s staff is working on amendments to strengthen the legislation in the wake of the *Dobbs v. Jackson Women’s Health Organization* decision. “Just because the Supreme Court has decided to strip us of the fundamental right to choose what [to do] with our bodies, doesn’t mean California will stand back and allow others to use our systems to obtain information to hurt people who are exercising a fundamental right here in California,” Bonta said.

Democrats in Congress have also introduced the “My Body, My Data Act,” which would create new privacy protections for reproductive health data. The bill has little chance of becoming law in a narrowly divided Congress, but Rep. Sara Jacobs (D-Calif.), the legislation’s architect, previously [told The Post](#) that she wants states to replicate the bill.

Privacy and tech advocacy groups are trying to gear up for the post-*Dobbs* battles. The Center for Democracy and Technology on Tuesday announced a new task force focused on protecting reproductive health information, which convened academics, civil rights groups and privacy organizations.

The Electronic Frontier Foundation, a privacy advocacy group, expressed support for the California privacy bill and is reviewing the South Carolina legislation. Hayley Tsukayama, a senior legislative activist at EFF and a former Post reporter, said the South Carolina bill has “serious problems.”

She’s anticipating that tech companies and their trade associations will be ramping up their lobbying efforts at the state level, especially early next year, when many states resume their legislative calendars. “For tech companies and for folks interested in digital rights, it’s going to be a wild ride in the next few years,” she said.